

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 1st day of August, two thousand and six.

PRESENT:

HON. RALPH K. WINTER,
HON. BARRINGTON D. PARKER,
HON. REENA RAGGI,
Circuit Judges.

Denada Markaj, _____

Petitioner,

-v.-

No. 05-5163-ag
NAC

Alberto R. Gonzales, Attorney General,
Respondent.

FOR PETITIONER: Aleksander Milch, New York, New York.

FOR RESPONDENT: Gregory R. Miller, United States Attorney for the Northern District of Florida, E. Bryan Wilson, Assistant United States Attorney, Tallahassee, Florida.

1 UPON DUE CONSIDERATION of this petition for review of a decision of the Board of
2 Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED that the
3 petition for review is GRANTED, the BIA’s order is VACATED, and the case is REMANDED
4 for further proceedings consistent with this decision.

5 Denada Markaj, through counsel, petitions for review of the BIA’s decision affirming
6 Immigration Judge (“IJ”) Roxanne Hladylowycz’s denial of her applications for asylum,
7 withholding of removal, and relief under the Convention Against Torture (“CAT”). We presume
8 the parties’ familiarity with the underlying facts and procedural history of the case.

9 Where, as here, the BIA summarily affirms the IJ, the Court reviews the IJ’s decision as
10 the final agency determination. *See, e.g., Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005).

11 **A. Asylum and Withholding of Removal**

12 One basis for the IJ’s denial of asylum was that Markaj failed to establish the nexus
13 between the persecution she feared and her affiliation with the Democratic Party (“DP”). Even if
14 this was error, the IJ also found that because Markaj’s mother, who also supported the DP, had
15 not been harmed in the two years between when Markaj left Albania and when she testified,
16 Markaj did not have a well-founded fear of future persecution. Whether an applicant has
17 established a well-founded fear of future persecution is reviewed for substantial evidence. *See*
18 *Zhao Jin Lin v. Attorney General of the U.S.*, 441 F.3d 193, 195 (2d Cir. 2006). Absent past
19 persecution, establishing a well-founded fear requires an applicant to show that she has a
20 subjective fear and that her fear is objectively reasonable. *See Cao He Lin v. U.S. Dep’t of*
21 *Justice*, 428 F.3d 391, 399 (2d Cir. 2005). The BIA has found that the reasonableness of an
22 applicant’s fear, referring to the objective component, is reduced when her family members, who

1 are similarly situated to the applicant and would fear persecution on account of the same grounds,
2 remain unharmed in her native country for a long period after the applicant's departure. *In re A-*
3 *E-M-*, 21 I. & N. Dec. 1157, 1160 (BIA 1990). Furthermore, the background material in the
4 record indicates that politically motivated violence has subsided and was limited to an isolated
5 number of minor cases in Himara in 2003. It was reasonable for the IJ to find that Markaj failed
6 to meet the objective component of well-founded fear and therefore failed to sustain her burden
7 of proof for asylum. Therefore, she cannot establish the higher likelihood of harm required for
8 withholding of removal. *See Abankwah v. INS*, 185 F.3d 18, 22 (2d Cir. 1999).

9 **B. CAT Relief**

10 The IJ summarily found that Markaj had not shown that it was more likely than not that
11 she would be tortured if forced to return to Albania. However, an applicant's CAT claim may be
12 established using different theories than her asylum or withholding claims. *Ramsameachire v.*
13 *Ashcroft*, 357 F.3d 169, 185 (2d Cir. 2004). To establish eligibility for CAT, an applicant must
14 establish that it is more likely than not that she will be tortured if returned to the proposed
15 country of removal. 8 C.F.R. § 1208.16(c)(2). Here, the IJ simply relied on the background
16 reports to find that Markaj's attempted abduction was part of the "criminal element" in Albania
17 that trafficks women in order to deny her asylum and withholding claims, but failed to consider
18 whether: (1) abduction, forcing a girl into a trafficking ring, and selling her into sexual slavery
19 may constitute torture; and (2) it is more likely than not that Markaj would be subject to this
20 harm.

21 The Department of State Report indicates that it is young women who are at risk of being
22 trafficked. Therefore, the fact that Markaj's mother, who is older, has remained unharmed in

1 Albania is not an indication of the risk of trafficking Markaj would face, as it was an indication
2 of the risk of political persecution. Markaj also testified that her older sister did not go out much
3 because she did not go to school and her younger sister is always escorted when outside;
4 therefore, their safety would not necessarily preclude a risk of trafficking either. We remand for
5 the BIA to consider whether Markaj has sustained her burden of proof for CAT relief.

6 For the foregoing reasons, the petition for review is GRANTED, the BIA's order is
7 VACATED, and the case is REMANDED to the BIA for further proceedings consistent with this
8 decision. Having completed our review, any stay of removal that the Court previously granted in this
9 petition is VACATED, and any pending motion for a stay of removal in this petition is DENIED as
10 moot. Any pending request for oral argument in this petition is DENIED in accordance with Federal
11 Rule of Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

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14 FOR THE COURT:
15 Roseann B. MacKechnie, Clerk

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17 By: _____
18 Oliva M. George, Deputy Clerk